

November 23, 2020

The Honorable Nicholas G. Garaufis
United States District Court
225 Cadman Plaza East
Brooklyn, NY 11201

RE: Plaintiffs' joint letter requesting leave to forego compliance with Local Rule 56.1 in *State of New York, et al. v. Trump, et al.*, No. 17-CV-5228 (NGG) (RER), and *Batalla Vidal, et al. v. Wolf, et al.*, No. 16-CV-4756 (NGG) (VMS).

Dear Judge Garaufis,

Plaintiffs in *State of New York v. Trump*, No. 17-CV-5228 (the State Plaintiffs), and *Batalla Vidal v. Wolf*, No. 16-CV-4756 (the *Batalla Vidal* Plaintiffs) submit the following joint request for leave to forego compliance with Local Civil Rule 56.1 in connection with their forthcoming motion for partial summary judgment. Defendants do not oppose this request.

On November 24, 2020, per the Court's scheduling order, Plaintiffs will file their motion for partial summary judgment under the Administrative Procedure Act (APA). Local Civil Rule 56.1 requires a "separate, short and concise statement . . . of the material facts as to which the moving party contends there is no genuine issue to be tried." Because of the nature of the issues to be briefed in the forthcoming motion, the evidence that Plaintiffs intend to submit to the Court in connection with their motion, and the purpose of the Rule 56.1 Statement, Plaintiffs respectfully request permission to forgo the Rule 56.1 requirement.

Plaintiffs' motion for partial summary judgment will argue that because Defendant Wolf was exercising the authority of the Acting Secretary in violation of the Homeland Security Act, the Wolf Memorandum was not issued "in accordance with law," and exceeded Mr. Wolf's statutory authority, in violation of the APA. 5 U.S.C. §§ 706(2)(A), (C). Because Plaintiffs' motion will seek relief under the APA, "[t]he entire case on review is a question of law." *New York v. U.S. Dep't of Health & Human Servs.*, 414 F. Supp. 3d 475, 516 (S.D.N.Y. 2019). For this reason, courts in this Circuit routinely forego the Rule 56.1 requirement where the case arises under the APA. *See Just Bagels Mfg., Inc. v. Mayorkas*, 900 F. Supp. 2d 363, 372 n.7 (S.D.N.Y. 2012) (collecting cases).

To the extent factual citations are necessary to present Plaintiffs' motion, Plaintiffs intend to direct the Court exclusively to facts that may be judicially noticed and evidence already present in the record of this action. Because this information will be clearly identified in Plaintiffs' memoranda of law with citations to corresponding authorities, Plaintiffs believe that a Rule 56.1 Statement will not further aid the Court's review. *See Holtz v. Rockefeller & Co.*, 258 F.3d 62, 73 (2d Cir. 2001) ("The purpose of Local Rule 56.1 is to streamline consideration of summary judgment motions by freeing district courts from the need to hunt through voluminous records without guidance from the parties."); *Student X v. N.Y.C. Dep't of Educ.*, No. 07-CV-2316 (NGG), 2008 WL 4890440, at *11 (E.D.N.Y. Oct. 30, 2008) ("[T]he 56.1 Statement will not aid the court in its independent review of the record"). Plaintiffs therefore respectfully seek leave to forego the Rule 56.1 requirement.

Respectfully submitted,

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* Motion for law student appearance
pending

**Application forthcoming in E.D.N.Y.